

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA
and STATE OF MARYLAND,

Plaintiffs,

v.

MAYOR AND CITY COUNCIL OF
BALTIMORE,

Defendant.

Civil Action No. Y-97-4185

STIPULATED AMENDMENT TO CONSENT DECREE

WHEREAS, on November 17, 1999, this Court entered a Consent Decree in this matter between Plaintiffs, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Maryland, on behalf of the Maryland Department of the Environment ("MDE"), and Defendants, the Mayor and City Council of Baltimore (hereinafter "Defendant" or "Baltimore City").

WHEREAS, the Consent Decree required that Baltimore City complete three Supplemental Environmental Projects ("SEPs"), identified as the Gwynns Run Pollution Control Project, the Gwynns Falls Debris Collection System, and the Brooklyn Park Stormwater Management Project, pursuant to the work plans and time schedules described in the Scopes of Work attached to the Consent Decree as Appendix C and incorporated into the Consent Decree by reference.

WHEREAS, Baltimore City has reported to EPA and MDE that it has encountered delays in performing the above-referenced SEPs, due in part to the expansion of the scope of certain of the projects, and that the City's projected cost to complete the SEPs now exceeds the original

estimated project cost by more than \$1 million.

WHEREAS, Baltimore City has proposed revised schedules and milestone dates for the completion of the SEPs, and EPA and MDE have agreed to the revised milestone dates in the present case, provided that Baltimore City is subject to potential stipulated penalties for failure to meet any of the revised milestone dates.

WHEREAS, Section XXI of the Consent Decree provides that the Consent Decree may be modified by written order of this Court.

WHEREAS, EPA, MDE, and Baltimore City (collectively, the “Parties”) desire to modify the Consent Decree and Appendix C to incorporate the revised milestones dates for completion of the SEPs, and to incorporate provisions providing for stipulated penalties in the event that Baltimore City does not comply with the revised milestones dates.

WHEREAS, Baltimore City has expended substantial effort and resources performing injunctive relief required by the Consent Decree with respect to Baltimore City’s Ashburton Water Treatment Plant and Patapsco Wastewater Treatment Plant, and this amendment does not extend and will not delay performance of the injunctive relief required in the Consent Decree to correct the violations alleged in the United States’ Amended Complaints and Maryland’s Amended Complaints in Intervention in this matter.

WHEREAS, the Parties recognize, and the Court by entering this Stipulated Amendment to the Consent Decree acknowledges, that entry of this Stipulated Amendment will avoid prolonged disputes and litigation between the Parties, and that this Stipulated Agreement is fair, reasonable, and in the public interest.

THEREFORE, the Schedule set forth on page 1 of Appendix C of the Consent Decree is deleted and the following Revised Schedule should be added in its place:

Brooklyn Park Stormwater Management Project

<u>Project Task</u>	<u>Completion Date</u>
Construction Advertisement	April 28, 2003
Notice to Proceed	January 28, 2004
Construction Completion	April 30, 2005

Gwynns Run Pollution Control Project

<u>Project Task</u>	<u>Completion Date</u>
Construction Advertisement	July 19, 2002
Notice to Proceed	April 19, 2003
Construction Completion	August 31, 2004

Gwynns Falls Debris Collection System

<u>Project Task</u>	<u>Completion Date</u>
Construction Advertisement	June 1, 2003
Notice to Proceed	March 1, 2004
Construction Completion	August 31, 2005

THEREFORE, Paragraphs 55, 56, and 57 of Section XI (Stipulated Penalties) of the Consent Decree are deleted and the following are added in their place:

55. a. In the event that Defendant is continuing to perform a SEP, or has satisfactorily completed a SEP, but has not complied with one or more of the milestone dates set forth in the Revised Schedule in Appendix C to this Consent Decree, Defendant shall be liable for \$2000 per day in stipulated penalties for each failure to meet an applicable milestone by the date specified in the Revised Schedule, until the relevant project task is completed, or until the provisions of Paragraph 55.b., 56, or 57 become applicable.

 b. In the event that Defendant fails to complete a SEP by the applicable construction completion milestone date set forth in the Revised Schedule in Appendix C, Defendant shall be liable for the following stipulated penalties for each SEP not performed:

(1) Gwynns Run Pollution Control Project	\$600,000
(2) Gwynns Falls Debris Collection System	\$600,000
(3) Brooklyn Park Stormwater Mgmt. System	\$1,300,000

c. Defendant shall pay fifty percent (50%) of any stipulated penalties due under this Paragraph to the United States and fifty percent (50%) to the State of Maryland.

56. If Defendant fails to complete a SEP, but EPA and MDE determine in their sole discretion that Defendant has made a good faith effort to complete the SEP, and Defendant certifies that at least ninety percent (90%) of the money required to be spent was expended on the SEP, Defendant will not be liable for any stipulated penalties, except for any stipulated penalty amounts accrued under Paragraph 55.a. through the required completion date for the relevant SEP.

57. If Defendant fails to perform a SEP due to impossibility of performance in accordance with the provisions of Section XII (Force Majeure), Defendant shall receive a credit equal to that amount of the SEP Project Cost expended on the failed SEP performance against the stipulated penalty set forth in Paragraph 55.b., above.

* * * * *

All other terms of the Consent Decree, as entered on November 17, 1999, shall remain in full force and effect.

APPROVED AND ENTERED THIS _____ DAY OF _____, 200__.

United States District Judge

STIPULATED TO:

FOR THE UNITED STATES OF AMERICA:

6.3.03
Date

THOMAS L. SANSONETTI
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FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

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May 9, 2003
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FOR THE STATE OF MARYLAND:

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Date

KENDL P. PHILBRICK
Acting Secretary
Maryland Department of the Environment

5/20/03
Date

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5/21/03
Date

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FOR THE MAYOR AND CITY COUNCIL OF BALTIMORE:

Date: 4/30/03

MARTIN O'MALLEY
Mayor

Approved for Form and Legal Sufficiency:

Date: 4/24/03

ERNEST A. CROFOOT
Chief of Law Practice Group
Litigation Division

APPROVED BY BOARD OF ESTIMATES

APR 30 2003
DEPUTY COMPTROLLER